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8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10

11 UNITED STATES OF AMERICA

No. CR13 0764 WHO

12 Plaintiff,

**DECLARATION OF COUNSEL IN
SUPPORT OF MOTION TO SUPPRESS
TELEPHONE DATA**

13 v.

14 ESAU FERDINAND,

Date: October 15, 2015

Time: 9:00 a.m.

15 Defendant.

Ctrtm.: Honorable William Orrick

16 I, Robert Waggener, declare as follows:

17 1. I am an attorney duly licensed to practice in the federal courts in the State of
18 California. I have been appointed to represent Defendant Ferdinand in the above entitled matter.

19 2. Discovery produced by the government in this case indicates that Defendant Esau
20 Ferdinand was arrested by officers of the San Francisco Police Department on October 25, 2011
21 pursuant to outstanding arrest warrants. The incident report referencing Ferdinand's arrest and
22 being held in custody at Southern Police Station (BG005730) reports the time of the occurrence
23 as 1:30 p.m.. I have searched the discovery produced in this case for a report regarding the actual
24 arrest of Mr. Ferdinand on October 25, 2011, but have found no such report. The report that has
25 been produced is authored by San Francisco Police Department Inspector Kevin Whitfield, and
26 indicates being informed that Mr. Ferdinand has been arrested and is currently at Southern Police
27 Station.

28 3. I am informed and believe that at the time he was arrested, Mr. Ferdinand was in
possession of a MetroPCS cell phone.

4. Within the discovery produced in this case is a 140 page download of the contents of “Ferdinand’s Telephone”, a UFED Samsung CDMA SCH-R380 (MetroPCS). (BG005840-6180; See Also BG080255-06)) The report is dated Tuesday, October 25, 2011 4:08 p.m..¹ The report contains 139 Contacts, over 600 Phone SMS-Text Messages, over 275 Images, and incoming and outgoing call information. I have searched the discovery produced in this case for any report as to the circumstances of the download of the Ferdinand phone on October 25, 2011 and have found no such report. I have also not found any warrant for the search of the phone. I am not aware of who directed the contents of the phone to be downloaded or who actually downloaded the contents of the phone.

5. I have asked the government to inform me whether the downloading of the Ferdinand phone was pursuant to a warrant and to provide me with any report regarding the download of the phone, and have yet to receive a response.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed this 17th day of September, 2015, in San Francisco, California.

Robert Waggener

¹ The report indicates the “Extraction start date/time” to be 10/25/11 15:56:17.